



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Legislative Fiscal Analyst
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DATE: May 24, 2006

TO: Legislative Finance Committee

FROM: Lois Steinbeck
Marilyn Daumiller
Kris Wilkinson

RE: FY 2006 Appropriation Transfer Update – DPHHS

BACKGROUND

The Office of Budget and Program Planning (OBPP) submitted appropriation transfer requests to the Legislative Fiscal Division (LFD) for several agencies shortly before the March LFC meeting. At the meeting, the Legislative Finance Committee (LFC) heard a staff briefing about initial issues and questions related to the FY 2006 appropriation transfer request for \$11.4 million general fund for the Department of Public Health and Human Services (DPHHS). The LFD forwarded the request to the LFC for its review on May 7.

The LFC directed staff to prepare an analysis of each appropriation transfer request and asked that members of each joint appropriation subcommittee from the 2005 session review the request and the staff analysis and provide comment to the LFC prior to its June meeting. The analysis and meetings were to be held before May 1 to allow the LFC to convene prior to its June meeting if necessary.

As of May 24, LFD staff has not been able to complete an analysis of the DPHHS appropriation transfer and submit it to the members of the joint appropriation subcommittee from the 2005 session for consideration and comment. This memo summarizes the current status of the request.

The goal of LFD staff is to complete and present an analysis of the DPHHS appropriation request in order to convene a meeting of the joint appropriation subcommittee members and receive their comments prior to the June LFC meeting.

AMENDED REQUEST

On May 4 the LFD received an amended appropriation transfer request and plan for DPHHS. The transfer request was reduced from \$11.4 to \$6.1 million. The plan was amended to identify specific cost savings measures that would be undertaken by DPHHS. All service reductions were removed, but a 1 percent provider rate reduction was included.

Figure 1 lists the changes that reduced the transfer request and the elements of the amended plan to reduce expenditures in FY 2007. Each of the items listed in Figure 1 is summarized.

Figure 1 Original Compared to Amended General Fund Appropriation Transfer Request DPHHS - FY 2006		
Item	Amount (Millions)	Percent of Total
Original Request	\$11.4	
Less		
Targeted Case Management Impact - DRA	(\$3.0)	57%
Shift General Fund Costs to Tobacco Tax (I-149)	(1.5)	28%
Savings due to Revision of Clawback - Part D - FY 2006	(0.6)	11%
Mental Health Services Plan Savings - Part D - FY 2006	<u>(0.2)</u>	<u>4%</u>
Subtotal Reductions	(\$5.3)	100%
Amended Transfer Request	\$6.1	
Cost Mitigation Steps in FY 2007		
Savings due to Revision of Clawback - Part D	\$3.9	64%
Administrative Cost Savings	1.0	16%
Mental Health Services Savings - Part D - FY 2007	0.4	7%
Medicaid Prescription Reimbursement Change - DRA	0.3	5%
Provider Rate Reduction	<u>0.5</u>	<u>8%</u>
Subtotal Mitigation	\$6.1	100%

TARGETED CASE MANAGEMENT COSTS

In late February, DPHHS estimated that the newly signed Deficit Reduction Act of 2005 (DRA) could increase state general fund costs by \$3 million in FY 2006 due to changes in federal participation in Medicaid targeted case management services. The additional cost was included in the appropriation transfer submitted for LFC review in early March.

In late April, Deputy Director John Chappuis indicated, based on unpublished, draft rules being considered by the Center for Medicare and Medicaid Services (CMS), that Montana would probably not be impacted by the case management changes included in the DRA. Therefore, DPHHS opted to remove the \$3 million shortfall related to that action in its amended request. In addition, DPHHS has taken the position that the Medicaid state plan approved by CMS is a contract between the state and the federal government that cannot be retroactively amended.

SHIFTING GENERAL FUND COSTS TO TOBACCO REVENUE

DPHHS identified \$1.5 million of general fund costs that can be shifted to tobacco tax state special revenue in FY 2006 in keeping with statutory requirements that nongeneral fund be expended prior to general when permitted.¹ This change accounts for 28 percent of the total reduction.

¹ 17-2-108(1), MCA.

MEDICARE PART D

As part of its review of the original transfer request, LFD staff asked that DPHHS provide its estimates of the clawback² payments required of states due to implementation of the new Medicare drug benefit (Part D) on January 1, 2006 and the documentation of the calculation of savings to the state funded Mental Health Services Plan (MHSP). DPHHS lowered its appropriation transfer request for FY 2006 by \$0.8 million due to savings in the clawback payment and lower MHSP prescription drug costs.

AMENDED PLAN

One of the initial concerns of LFD staff was that the first FY 2007 cost containment plan submitted by DPHHS did not fulfill statutory criteria. A legal opinion³, which was shared with the appropriate agencies and offices, concluded that the plan submitted by DPHHS did not meet statutory criteria because it did not specify which, if any, of the options listed would be implemented. The amended plan does allow the LFD staff to determine what actions will be taken by DPHHS and whether the costs can be offset.

MEDICARE PART D CLAWBACK

The most significant savings, identified by DPHHS, nearly \$4 million or 64 percent of the reduction, is related to the Medicare Part D clawback payments in FY 2007. DPHHS anticipates savings because there are fewer persons eligible for both Medicaid and Medicare than projected and because the base year cost was recalculated and reduced by CMS.⁴

In order to evaluate the clawback estimates, on May 9 LFD staff requested that DPHHS clarify:

- o Prescription drug costs for FY 2005, FY 2006 and FY 2007 as well as the percentage of drug rebates that occurred and were projected for those time periods
- o The estimated number of dual eligibles⁵ that would be used to pay the clawback amount for FY 2006 and FY 2007

LFD staff has not received a response, but continues to work and communicate with DPHHS on receipt of enough documentation to proceed.

² States must repay a portion of the savings in Medicaid costs attributable to assumption of drug costs by Medicare. The clawback payment is based on a base year per person cost for persons eligible for both Medicare and Medicaid. The base year cost is inflated forward based on a national health index and then reduced by 90 percent the first year and then lowered incrementally until the cost is 75 percent of the base plus inflation. The per person cost is multiplied by the monthly number of persons eligible for both Medicare and Medicaid.

³ Greg Petesch, Code Commissioner and Director of the Legal Services Bureau, Legislative Services Division published the opinion on April 4, 2006. A copy of the opinion is on file in the LFD.

⁴ There are fewer persons eligible for both Medicaid and Medicare in the medically needy optional eligibility group. Persons who are eligible for Medicaid meet the resources, age, and disability eligibility criteria except they have income in excess of financial criteria. Persons who incur medical bills in an amount to "spend down" their income to the Medicaid income criteria are then eligible for Medicaid. Since some persons were eligible due to their drug expenditures and those costs are now born by Medicare, they no longer spend down their income to be eligible for Medicaid. Therefore there are fewer persons eligible for both programs and the clawback amount is lower than anticipated.

⁵ A dual eligible refers to persons who are eligible for both Medicare and Medicaid.

ADMINISTRATIVE COST SAVINGS

DPHHS will continue to hold nonessential positions open longer, reduce travel costs, and constrain other administrative costs in an effort to reduce general fund by about \$1 million in FY 2007. Administrative cost savings are anticipated to comprise about 16 percent of the \$6.1 million spending reduction in FY 2007.

PROVIDER RATE REDUCTION

DPHHS anticipates reducing provider rates by about 1 percent to achieve a \$0.5 million general fund savings or 8 percent of the total cost reduction plan.

MEDICARE PART D SAVINGS IN MHSP

DPHHS estimated that Part D will reduce general fund costs for prescription drugs by about \$0.4 million in FY 2007. The reduction is expected to occur because some persons eligible for MSHP are receiving drug coverage for most of their mental health prescriptions through Part D.

CHANGE IN MEDICAID DRUG COSTS

LFD staff asked whether DPHHS had considered the effect of cost savers included in the DRA since the appropriation transfer request originally submitted included a significant increase based on changes in federal reimbursement for Medicaid targeted case management costs. The LFD specifically asked whether DPHHS had considered the savings due to reimbursement for drug costs based on the average manufacturer's price instead of the average wholesale price. DPHHS estimated that it would save about 2 percent on drug costs in FY 2007 based on the change effective July 1, reducing general fund costs by about \$0.3 million or 5 percent of the total reduction.

MOST RECENT BUDGET STATUS REPORT

DPHHS submitted its most recent budget status report (BSR) to the LFD on May 15. The spending estimates were based on April expenditure data for Medicaid service costs and March data for all other costs. The most recent BSR estimates that DPHHS will need \$11.3 million general fund more than its FY 2006 appropriation.

The BSR includes the \$3 million shortfall for targeted case management costs that was removed from the appropriation transfer request as well as a \$1.8 million "cushion" for Medicaid hospital costs because of data anomalies and potentially higher than normal costs for neonatal cases.

The BSR is based on a worst-case scenario, while the appropriation transfer request represents a more optimistic scenario.⁶ DPHHS staff is hopeful that draft federal rules with the changes in targeted case management will be published prior to the June LFC meeting. At that point, it may be clearer whether or not the state will owe additional funds for Medicaid targeted case management services this fiscal year and what impact it will have on the supplemental request.

⁶ John Chappuis, Deputy Director and State Medicaid Director, DPHHS, May 24, 2006, personal conversation with Lois Steinbeck.

DPHHS continues to research the legal rationale that the DRA cannot make retroactive changes to state reimbursement for services authorized by and agreed to in the federally approved state Medicaid plan. The legal argument is that the state plan constitutes a contract and cannot be impaired.

SUMMARY

DPHHS anticipates getting the documentation supporting its estimates of clawback payments to LFD staff sometime the week of May 22. LFD staff will complete its analysis and a report for the subcommittee as soon as possible after receiving the data from DPHHS. LFD staff will also attempt to convene a meeting of legislators who were members of the 2005 legislative appropriation subcommittee to review the report and provide comments to the LFC prior to its June meeting.

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